REMARKS

Claims 1-33 remain pending in the application.

Claims 1-7, 12-21 and 26-29 over Lechleider in view of Bellenger

In the Office Action, claims 1-7, 12-21 and 26-29 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lechleider, U.S. Patent No. 6,091,713 ("Lechleider") in view of Bellenger et al., U.S. Patent No. 6,058,110 ("Bellenger"). The Applicants respectfully traverse the rejection.

Claims 1-7, 12-21 and 26-29 recite a system and method relying on a combination analog/DSL modem that supports analog service to a subscriber and **DSL service** from a **DSL service provider** to said subscriber.

The Examiner acknowledges that Lechleider fails to disclose use of an analog/DSL modem wherein the combination analog/DSL modem supports analog service to a subscriber and DSL service to the subscriber (Office Action, page 4). The Office Action relies on Bellenger to allegedly make up for the deficiencies in Lechleider to arrive at the recited features.

The Examiner alleges that although Bellenger's modem is only a conventional voice band modem which operates at a higher bit rate and frequency band (into the DSL band), such a description sufficiently defines an ADSL modem (Office Action, page 2). The Applicants respectfully disagree.

As Applicants had previously pointed out, Bellenger's dual band modem operates at DSL frequencies (Abstract). However, even when the dual band modem operates at DSL frequencies, the dual band modem is **unable** to support **DSL service** because Bellenger's modem is simply a conventional modem operating at DSL frequencies, as Bellenger discloses the modem allows a choice of operating at a higher data rate **without the cost of an ADSL modem** (Bellenger, col. 3, lines 1-8). The Examiner has **repeatedly ignored** Bellenger's acknowledgement that Bellenger's dual band modem operating at DSL frequencies but is **NOT** a DSL modem. Thus, Bellenger fails to disclose or suggest a dual band modem that supports **DSL service** to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Moreover, the Examiner is reminded that DSL stands for **digital subscriber** line. Bellenger discloses a modem that operates in an ADSL band when it is able to connect to a communication channel that lacks bandwidth limitations of an analog telephone network, such as a private branch exchange, hotels, offices and large organizations (col. 3, lines 15-30). Thus, Bellenger's modem operating at DSL frequencies is not disclosed as communicating with a digital subscription service, i.e., a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Nevertheless, the Examiner acknowledges in the Advisory Action that Bellenger's modem is able to transmit in both voice band and DSL band, (Office Action, page 2). To more clearly distinguish the claims over the cited prior art the Applicants herein amend claims 1-7, 12-21 and 26-29 to recite a combination analog/DSL modem that supports analog service to a subscriber and DSL service from a DSL service provider to said subscriber. As discussed above, Bellenger acknowledges the disclosed dual band modem operates at DSL frequencies but is **NOT** a DSL modem. As such, Bellenger's dual band modem would not have the capability to communicate with a DSL service provider, as recited by claims 1-7, 12-21 and 26-29.

Thus, even if it were theoretically obvious to modify Lechleider with Bellenger (which it was not), the result would be a method and system using a combination voice band and DSL band modem to estimate the viability of deplaying broadband services over a subscriber loop in a public switched telephone network. Lechleider modified by Bellenger's combination modem that **lacks** the capability to support DSL service from a DSL service provider to a subscriber would **NOT** result in a combination analog/DSL modem that supports DSL service from a DSL service provider to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Moreover, Lechleider system modified by Bellenger's modem would still require the combination modem that **lacks** the capability to support DSL service to be replaced with a modem that allows a customer to receive DSL service from a DSL service provider. The theoretical combination of Lechleider

and Bellenger would result in a system similar to Lechleider's that would **still require** replacing the combination modem for one that would support DSL service from a DSL service provider, as recited by claims 1-7, 12-21 and 26-29.

Moreover, even if Bellenger disclosed a combination analog/DSL modem, which as discussed above Bellenger fails to do, "Teachings of references can be combined only if there is some suggestion or incentive to do so." In re Fine, 5 USPQ2d 1596,1600 (Fed. Cir. 1988) (quoting ACS Hosp. Sys. v. Montefiore Hosp., 221 USPQ 929, 933 (Fed. Cir. 1984)) (emphasis in original). Nothing in Lechleider and Bellenger, nor any of the cited prior art, suggests replacing Lechleider analog modem with **anything**, much less a combination analog/DSL modem that supports DSL service from a DSL service provider to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

Thus, Lechleider modified by the disclosure of Bellenger that **lacks** the capability to support DSL service fails to disclose, teach or suggest a combination analog/DSL modem that supports DSL service from a DSL service provider to a subscriber, as recited by claims 1-7, 12-21 and 26-29.

A benefit of a combination analog/DSL modem is, e.g., testing of a DSL line after DSL service is initiated. If DSL service becomes interrupted after service is initiated, the prior art requires detaching a DSL modem and attaching an analog modem to test a service line. Use of a combination analog/DSL modem would simply require a user to initiate the analog portion to test a service line and report any faults. Once DSL service is restored, the DSL portion is once again initiated to restore DSL service without having to disconnect a modem and reconnect another. The cited prior art fails to disclose or suggest such a benefit.

Accordingly, for at least all the above reasons, claims 1-7, 12-21 and 26-29 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Claims 8-11, 22-25 and 30-33 over Lechleider in view of Bellenger and Vogt

In the Office Action, claims 8-11, 22-25 and 30-33 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lechleider in view of

Bellenger, and further in view of Vogt, III et al., U.S. Patent No. 5,625,667 ("Vogt"). The Applicants respectfully traverse the rejection.

Claims 8-11, 22-25 and 30-33 are dependent on claims 1, 16 and 27 respectively, and are allowable for at least the same reasons as claims 1, 16 and 27.

Claims 8-11, 22-25 and 30-33 recite a system and method relying on a combination analog/DSL modem that supports analog service to a subscriber and **DSL service** from a **DSL service provider** to said subscriber.

As discussed above, Lechleider modified by the disclosure of Bellenger would still fail to disclose, teach or suggest a system and method relying on a combination analog/DSL modem that supports analog service to a subscriber and **DSL service** from a **DSL service provider** to said subscriber, as recited by claims 8-11, 22-25 and 30-33.

The Office Action relies on Vogt to allegedly make up for the deficiencies in Lechleider and Bellenger to arrive at the claimed invention. The Applicants respectfully disagree.

Vogt appears to disclose a method of measuring characteristics such as resistance, capacitance and foreign voltage on a telephone line (Abstract). A steady state voltage is sampled a number of times to determine the resistance, capacitance and foreign voltage on the telephone line (Vogt, col. 4, lines 3-16).

Although Vogt discloses testing a telephone line for operating characteristics, Vogt fails to disclose or suggest a system and method relying on a combination analog/DSL modem that supports analog service to a subscriber and **DSL service** from a **DSL service provider** to said subscriber, as recited by claims 8-11, 22-25 and 30-33.

Thus, Lechleider modified by the disclosure of Bellenger and Vogt would still fail to disclose, teach or suggest a system and method relying on a combination analog/DSL modem that supports analog service to a subscriber and **DSL service** from a **DSL service provider** to said subscriber, as recited by claims 8-11, 22-25 and 30-33.

Accordingly, for at least all the above reasons, claims 8-11, 22-25 and 30-33 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,
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